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No. 84-519

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

CLARK OIL & REFINING CORPORATION,
Petitioner,

vs.

LEHMAN BROTHERS KUHN LOEB, INC.,
Respondent,

and

UNITED STATES OF AMERICA,
Intervenor.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Respondent, Lehman Brothers Kuhn Loeb, Inc., submits this brief in opposition to the Petition for Writ of Certiorari filed by Petitioner, Clark Oil & Refining Corporation, in which Petitioner seeks review of the judgment and opinion of the United States Court of Appeals for the Eighth Circuit, en banc, entered July 11, 1984. The decision of the Eighth Circuit is reported as *Lehman Brothers Kuhn Loeb, Inc. v. Clark Oil & Refining Corporation,* 739 F.2d 1313 (8th Cir. 1984)(en banc).

STATEMENT OF THE CASE

This case involves a commercial dispute between two large enterprises, involving the application of the terms of a written contract to undisputed facts.

Respondent, a leading investment banking firm, brought this action against Petitioner, a multimillion dollar oil company, as a result of Petitioner's failure to pay a fee of 1.9 million dollars owing to Respondent under a written contract for investment banking services between it and Petitioner's predecessor, also named Clark Oil & Refining Corporation.

The contract provided that Petitioner's predecessor would pay Respondent a fee, calculated as provided in the contract, upon the sale of Petitioner's predecessor, if the sale was approved by the predecessor's board of directors. Such a sale was consumated with Apex Oil Company after approval by the predecessor's board of directors, and Petitioner's predecessor thereupon became obligated to pay the agreed upon fee. Petitioner, by its merger with its predecessor, succeeded to that obligation, but refused to pay Respondent's fee.

The parties conducted extensive document discovery and many depositions in the case. Following the completion of discovery, the Petitioner and Respondent agreed that the case should be heard and decided by a magistrate of the district court under Section 636(c) of the United States Magistrates Act, 28 U.S.C. §636(c). Accordingly, the parties executed a stipulation expressly waiving trial and entry of judgment by the district judge and consenting to trial and entry of judgment by the magistrate. The parties submitted the stipulation to the district judge, who thereafter entered an order approving the reference to the magistrate.

Petitioner and Respondent both filed motions for summary judgment. At that stage of the proceedings, both parties argued that the material facts were undisputed and that this case was

ripe for summary judgment. After extensive briefing and oral argument before the magistrate, the magistrate issued his order (accompanied by a careful and thoughtful opinion) granting Respondent's motion for summary judgment and denying Petitioner's motion. Judgment of the district court was entered on the magistrate's order.

Petitioner thereupon appealed the entry of summary judgment in favor of Respondent to the Court of Appeals for the Eighth Circuit, arguing, as it does here, that the district court could not constitutionally enter judgment on the magistrate's order, and that the case was not ripe for disposition on summary judgment. The Eighth Circuit, sitting en banc, rejected Petitioner's arguments and affirmed the judgment entered in the district court. The court en banc unanimously ruled that summary judgment was properly entered on the merits; three judges dissented on the constitutional issue.

REASONS FOR DENYING THE WRIT

The Petitioner offers two arguments in support of its Petition for Writ of Certiorari: *First,* Petitioner argues that Section 636(c) of the United States Magistrate Act is unconstitutional because it allows federal magistrates to exercise case dispositive authority with the consent of the parties and the approval of the district court; *Second,* Petitioner argues that there are genuine issues of material fact in the record which would preclude summary judgment.

This Court should deny the petition for writ of certiorari because the issues raised by the petitioner were authoritatively decided by the Court of Appeals en banc. The decision of the Court of Appeals resolving these issues does not conflict with any decision of this Court or any other court of appeals. The constitutionality of Section 636(c) has been upheld not only in the court below but in every other circuit which has addressed the issue. Moreover, this Court has denied petitions for certiorari raising the very same challenge to Section 636(c). The

case on the merits presents no issue of federal significance. The court below correctly held that summary judgment was properly entered on Respondent's state law claim for breach of contract. In so holding the Court of Appeals merely applied settled legal principles to the undisputed facts of this particular case.

The issues raised by Petitioner do not justify further review by this Court.

ARGUMENT

I. The Consensual Reference Of A Civil Suit To A United States Magistrate Under 28 U.S.C. §636(c) For Disposition And Entry Of Final Judgment Does Not Violate Article III Of The United States Constitution.

This case was decided pursuant to a voluntary, consensual reference of the action to a federal magistrate for disposition and entry of final judgment upon the magistrate's order, as authorized by Section 636(c) of the United States Magistrates Act, 28 U.S.C. §636(c). The Petitioner seeks to challenge this procedure, contending that a case-dispositive reference to a magistrate, even though made with the voluntary consent of the parties and with the approval of the district judge, violates Article III of the United States Constitution because a magistrate is a non-Article III officer of the district court.

The Petitioner's argument is without merit; Section 636(c) is clearly constitutional. Indeed, this Court has already in this term denied three petitions for certiorari raising the same constitutional challenge to Section 636(c) as the Petitioner raises here.[1] A total of eight federal Court of Appeals have, to date,

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[1] *Pacemaker Diagnostic Clinic, Inc. v. Instromedix, Inc.*, 725 F.2d 537 (9th Cir. 1984) (en banc), *cert. denied* 53 U.S.L.W. 3236 (No. 83-1873 Oct. 1, 1984); *Collins v. Foreman*, 729 F.2d 108 (2d Cir. 1984), *cert. denied* 53 U.S.L.W. 3236 (No. 83-1616 Oct. 1, 1984); *Goldstein v. Kelleher*, 728 F.2d 32 (1st Cir. 1984), *cert. denied* 53 U.S.L.W. 3236 (No. 84-5 Oct. 1, 1984).

considered the very issue raised by the Petitioner, and have upheld the constitutionality of Section 636(c).[2] Not one circuit has found the provision to be unconstitutional.

The Courts of Appeals, in addressing the constitutionality of Section 636(c), have authoritatively concluded that the provision does not offend any of the values which Article III was designed to protect. The provision does not threaten the independence of the federal judiciary, nor is it an attempt to create an alternative system of tribunals outside the confines of Article III. In short, these courts have concluded that the consensual reference procedure involves nothing more than the internal operations of Article III courts. Furthermore, to the extent due process concerns might be raised, these courts have uniformly held that such concerns are effectively eliminated by the voluntary consent of the parties to the reference.

II. The Court Of Appeals Correctly Ruled That There Were No Genuine Issues Of Material Fact In The Record Below And That Summary Judgment Was Properly Entered In Favor Of Respondent.

The Petitioner also argues in its Petition for Writ of Certiorari that there are genuine issues of material fact which preclude entry of summary judgment in favor of Respondent in this state law contract dispute. Petitioner's argument may be quickly resolved.

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[2] In addition to the decision below of the Eighth Circuit, en banc, the constitutionality of Section 636(c) has been upheld by the First Circuit in *Goldstein v. Kelleher,* 728 F.2d 32 (1st Cir. 1984); the Second Circuit in *Collins v. Foreman,* 729 F.2d 108 (2d Cir. 1984); the Third Circuit in *Wharton-Thomas v. United States,* 721 F.2d 922 (3d Cir. 1983); the Fifth Circuit in *Puryear v. Ede's Ltd.,* 731 F.2d 1153 (5th Cir. 1984); the Seventh Circuit in *Geras v. Lafayette Display Fixtures, Inc.,* No. 83-2728 (7th Cir. Aug. 23, 1984); the Ninth Circuit in *Pacemaker Diagnostic Clinic, Inc. v. Instromedix, Inc.,* 725 F.2d 537 (9th Cir. 1984) (en banc), *reversing* 712 F.2d 1305 (9th Cir. 1983); and the District of Columbia Circuit in *Fields v. Washington Metropolitan Area Transit Authority,* No. 83-1186 (D.C. Cir. Sept. 11, 1984).

In the district court the Petitioner contended that there were no issues of material fact and that this case was ripe for summary judgment. On appeal before the Eighth Circuit the Petitioner *then* claimed, as it does here, that there are indeed issues of material fact and that entry of summary judgment was inappropriate.

The nine judges of the Eighth Circuit sitting en banc unanimously rejected the Petitioner's contention on the merits, finding that this case involved nothing more than the application of established legal principles to undisputed facts. The court found that the contract between Respondent and Petitioner's predecessor was unambiguous, that the facts relating to the acquisition of Petitioner's predcecessor and the performance of services by Respondent were undisputed, and that the undisputed facts fulfilled all the contractual conditions to entitle Respondent to the fee it claimed in this action. Accordingly, Eighth Circuit, en banc, affirmed the entry of summary judgment in favor of Respondent.

The decision of the Eighth Circuit affirming summary judgment on the merits does not conflict with any decision of another federal court of appeals, nor does it involve any important question of federal law which should be decided by this Court. The Eighth Circuit's decision rests on the application of settled principles of state law to the undisputed facts of this contract case.

CONCLUSION

For the reasons set forth above, further review by this Court is not warranted. The Petition for Writ of Certiorari should accordingly be denied.

Respectfully submitted,

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